

1  
2  
3  
4  
5  
6  
7  
8  
9 IN THE UNITED STATES DISTRICT COURT  
10 FOR THE DISTRICT OF OREGON

11 DELORES HECKMANN, )  
12 Plaintiff, ) No. CV-04-1456-HU  
13 v. )  
14 CITY OF MILWAUKIE, ) ORDER  
15 Defendant. )  
16 \_\_\_\_\_)

17 HUBEL, Magistrate Judge:

18 Plaintiff Delores Heckmann brings this action against  
19 defendant the City of Milwaukie, apparently challenging the  
20 imposition of certain municipal fines and a judicially authorized  
21 sale of her real property. Plaintiff filed the action in October  
22 2004 and the case was originally assigned to Judge Mosman.  
23 Defendant moved to dismiss the action for failure to state a claim,  
24 or alternatively, for an order requiring plaintiff to make her  
25 allegations more definite and certain.

26 In an April 4, 2005 Opinion & Order, Judge Mosman granted the  
27 motion to make more definite and certain and directed plaintiff to  
28 submit an amended complaint within fourteen days. As noted by

1 Judge Mosman, the Complaint stated, in full, as follows: "This  
2 [is] about [an] Exempt Property - Veterans Loan For A Home. My  
3 true statement on cover sheet. Inside will tell you what went on  
4 over our Property 'to make our Son and Two Grandchildren  
5 Homeless.'"

6 Attached to the Complaint is an affidavit by plaintiff briefly  
7 identifying the members of her family and describing a series of  
8 attached exhibits. The exhibits included correspondence between  
9 the City of Milwaukie prosecutor and plaintiff's former counsel  
10 regarding the fines levied against the Heckmanns for violations of  
11 city health and safety codes on the Heckmanns' property, various  
12 documents regarding payments on an Oregon Department of Veterans'  
13 Affairs note and mortgage on the property, and state court  
14 pleadings filed by the City of Milwaukie in connection with its  
15 enforcement actions against the Heckmanns.

16 Judge Mosman explained that the Complaint failed to comply  
17 with Federal Rule of Civil Procedure Rule 8(a)(2) because it did  
18 not contain a "short and plain statement of the grounds upon which  
19 the court's jurisdiction depends," "a short and plain statement of  
20 the claim showing that the pleader is entitled to relief," or "a  
21 demand for judgment for the relief the pleader seeks." Apr. 4,  
22 2005 Op. & Ord. at p. 2. He further explained that as a result,  
23 the Complaint was so vague and ambiguous that defendant could not  
24 reasonably be required to frame a responsive pleading. Id.

25 Judge Mosman noted that the exhibits, and plaintiff's comments  
26 on each exhibit, suggested that plaintiff's complaint related in  
27 some way to the City of Milwaukie's actions with respect to  
28 plaintiff's property and the property's judicially ordered sale.

1 Id. But, he stated, it was not clear which actions plaintiff  
2 complained of, what damages the actions are alleged to have caused,  
3 or on what basis the court had jurisdiction. Id.

4 Judge Mosman then carefully explained what plaintiff's amended  
5 complaint should contain. Id. at pp. 2-3. He attached pages from  
6 the official Appendix of Forms provided by the Federal Rules of  
7 Civil Procedure to assist plaintiff in her task. Id. at p. 3. He  
8 explained the possible bases for jurisdiction, noting that  
9 diversity jurisdiction was unlikely given that both plaintiff and  
10 defendant appeared to be citizens of Oregon. Id. He further  
11 explained the different types of relief that plaintiff might seek  
12 and how she needed to identify the wrongful actions allegedly taken  
13 by defendant and how they caused her damage or otherwise entitled  
14 her to relief. Id.

15 In response to Judge Mosman's April 4, 2005 Opinion & Order,  
16 plaintiff filed an untitled document on April 29, 2005, which Judge  
17 Mosman construed as the Amended Complaint. Following receipt of  
18 that pleading, the case was transferred to me due to both parties'  
19 consent to entry of final judgment by a Magistrate Judge in  
20 accordance with Federal Rule of Civil Procedure 73 and 28 U.S.C. §  
21 636(c). Defendant now moves to dismiss the Amended Complaint. I  
22 grant the motion.

23 The Amended Complaint states in full as follows:

24 May 1, 1998 Court Date - for Violation  
25 City of Milwaukie - Judge Gray Municipal Court.

26 (1) Wilhelm & Delores & Dannie Heckmann asked for a  
27 change of Judge. It was denied - We did not think Judge  
Gray would be fair with us.

28 (2) Judge Gray fined us - Wilhelm & Delores & Dannie  
Heckmann all (3) as one \$100,000.00 - Plus \$38,191.19

1 Dannie Heckmann unpaid fines. This is a very large  
2 massive fine - Not to City Code - City of Milwaukie Code  
\$500.00 per day -

3 (3) The City of Milwaukie entered satisfaction of fines  
4 from April 17, 1997, court in Oregon City for \$4500.00 -  
5 before the City of Milwaukie wanted \$35,000 from Wilhelm  
6 Heckmann & Delores Heckmann 2 court violation. They were  
7 massive fine not to City Code - Entered on August 31,  
1997. Then the new violation beginning on Oct 15, 1997  
Just 45 day. For 67 days of violions [sic] \$100,000.00  
was for the (67) days.

8 (4) The massive fines were the cause for making my family  
9 - homeless - no atty and my husband very sick was unable  
to go to court in Ore. City. When the City of Milwaukie  
took us to court.

10 My Hope for monetary relief.

11 My True Statement

12 /s/ Delores Heckmann

13 Am. Compl.

14 Defendant contends that the Amended Complaint must be  
15 dismissed for failure to allege facts that state a claim upon which  
16 relief may be granted, or which show that this Court has subject  
17 matter jurisdiction of plaintiff's claims. Defendant notes that it  
18 appears from the allegations in plaintiff's Amended Complaint that  
19 she challenges "massive fines" imposed by "Judge Gray" of the  
20 "municipal court." Defendant contends that plaintiff fails to  
21 allege how these allegations support a claim against defendant.  
22 Defendant further suggests that the Amended Complaint fails to  
23 comply with Judge Mosman's Opinion & Order requiring that the  
24 Amended Complaint briefly and clearly state the basis for federal  
court jurisdiction over the action.

25 In response to the motion, plaintiff writes that it is her  
26 belief that defendant has retaliated "against us." Pltf's Resp. at  
27 p. 1. She attaches several exhibits, all of which were attached to  
28 her affidavit submitted in support of her original Complaint. The

1 exhibits include correspondence from defendant's attorney to  
2 plaintiff's then attorney in 1997 regarding Clackamas County  
3 District Court Case No. 96-10666 and referencing forms of judgment,  
4 a prior plea of guilty to certain violations, reference to future  
5 citations for new violations, the possibility of a payment plan to  
6 pay off a fine, and more. Exhs. 1 and 2 to Pltf's Resp.

7 The exhibits also include a satisfaction of judgment in the  
8 same Clackamas County case dated August 31, 1997, and a Complaint  
9 filed on March 23, 1998, in the City of Milwaukie Municipal Court,  
10 for alleged municipal code violations beginning on October 15, 1997  
11 and continuing. Exhs. 3 and 4 to Pltf's Resp. The new complaint  
12 was assigned case number 100198 (1--11). Finally, the exhibits  
13 include an Order signed by Judge Ronald Gray and dated September 9,  
14 1998, in the City of Milwaukie Municipal Court in case numbers  
15 100198, 100298, and 100398, which makes certain findings of fact  
16 and orders the payment of a \$100,000 fine, to which the defendants  
17 in the case, Wilhelm Heckmann, Delores Heckmann, and Dannie  
18 Heckmann were jointly and severally liable, Exh. 5 to Pltf's Resp.

19 Defendant is correct that the Amended Complaint fails to  
20 comply with Judge Mosman's Opinion & Order in that it does not  
21 present a basis for federal court jurisdiction and fails to  
22 articulate a short and plain statement showing entitlement to  
23 relief. The Amended Complaint, like the original Complaint,  
24 includes insufficient facts to demonstrate the nature of  
25 plaintiff's claim. There is no indication of what laws,  
26 constitutional provisions, or common law rights plaintiff believes  
27 defendant allegedly violated or how particular facts support a  
28 claim. Certainly plaintiff believes that the fines levied against

1 her and her husband and son, and the later judicial sale of her  
2 property, was wrongful in some manner. But, she does not  
3 articulate any particular legal theory in support of her belief and  
4 does not put forth facts upon which this Court can derive a  
5 possible theory. Plaintiff's response to defendant's motion, and  
6 its supporting exhibits, do not address or cure the failures of the  
7 Amended Complaint. Accordingly, the Amended Complaint must be  
8 dismissed.

9 The remaining issue is whether the dismissal is to be with or  
10 without prejudice. Defendant does not address the question.

11 Generally, "[u]nless it is absolutely clear that no amendment  
12 can cure the defect . . ., a pro se litigant is entitled to notice  
13 of the complaint's deficiencies and an opportunity to amend prior  
14 to dismissal of the action." Lucas v. Department of Corrections,  
15 66 F.3d 245, 248 (9th Cir. 1995) (per curiam).

16 Although Judge Mosman's Opinion & Order granted defendant's  
17 alternate motion for a more definite statement rather than the  
18 motion to dismiss, Judge Mosman carefully explained the Complaint's  
19 deficiencies and gave plaintiff leave to amend. Nonetheless, he  
20 did not warn her that failure to submit an amended pleading in  
21 conformity with his directions or the Federal Rules of Civil  
22 Procedure would result in a dismissal of the action with prejudice.  
23 Because he did not do so, I exercise my discretion in favor of  
24 giving plaintiff one more opportunity to file a complaint that  
25 complies with the requirements thoroughly discussed by Judge  
26 Mosman. I further note that because "[a]n amended pleading  
27 supersedes the original[,]" Hal-Roach Studios, Inc. v. Richard  
28 Feiner & Co., 896 F.2d 1542, 1546 (9th Cir. 1990), plaintiff should

1 file a Second Amended Complaint which does not rely on or  
2 incorporate her prior filings. Any Second Amended Complaint must  
3 stand alone in stating the basis for jurisdiction, in stating facts  
4 in support of a claim, in stating the legal theory, including the  
5 statute, constitution, or common-law basis for the claim, and in  
6 stating the relief sought. If the Second Amended Complaint  
7 continues to be deficient in the ways discussed in Judge Mosman's  
8 Opinion & Order and in this Order, it will be dismissed with  
9 prejudice and no further amendments will be allowed.

10 CONCLUSION

11 Defendant's motion to dismiss (#19) is granted. Plaintiff  
12 shall file a Second Amended Complaint within fourteen (14) days of  
13 the date of this Order.

14 IT IS SO ORDERED.

15 Dated this 28th day of June, 2005.

16  
17  
18 /s/ Dennis James Hubel  
19 \_\_\_\_\_  
Dennis James Hubel  
United States Magistrate Judge  
20  
21  
22  
23  
24  
25  
26  
27  
28